

### **REMARKS/ARGUMENTS**

Claims 1-20 are currently pending in the present application. Claims 8-20 are indicated as withdrawn from consideration. No claims have been amended at this time.

Reconsideration and rejoinder of the withdrawn claims and non-elected subjected matter of claims 1-7 and 19-20 is requested, if the elected claims are indicated as allowable.

Applicants wish to thank the Examiner for withdrawing several rejections under 35 U.S.C. §§102 and 103. Applicants agree that the references of record do not describe or suggestion the claimed invention.

Reconsideration of the present application is requested in view of the following remarks.

#### **Rejection under 35 U.S.C. § 103(a)**

The rejection of claims 1-7 and 19-20 under 35 U.S.C § 103(a) as obvious over Rosier et al. (US Patent No. 7,084,293) is respectfully traversed for reasons of record and the reasons indicated below.

Rosier et al. generally describes a process of hydrocyanation of ethylenically unsaturated organic compounds in the presence of a catalytic system comprising a metallic element and mono- and pluridentate organophosphorus ligands.

Rosier et al. describes organophosphate ligands (column 3 to 5), the use of nickel zero (column 6) and Lewis acids (column 8). In the reference, at column 8, lines 17 to 39, the Lewis acids are specified, at column 8, lines 40 - 41 it is indicated that triphenylborane and titanium isopropylate can also be used as Lewis acids, at column 8, line 42 it is indicated that mixtures of several Lewis acids can be used, and at column 8, line 46 only one such mixture is exemplified, namely zinc chloride/stannous chloride mixtures.

Rosier et al. is silent regarding any other mixtures, in which the examples only show experiments with a single Lewis acid (either zinc chloride or indium trifluoroacetate). Further, Rosier et al. does not provide any information or suggest to use a combination of a Lewis acid and a compound of the formula  $MR_n$ , where the Lewis acid and  $MR_n$  are different, and where M is selected from Al and Ti.

By contrast, the present invention provides a system suitable as a catalyst for the

hydrocyanation of olefinically unsaturated compounds comprising a) Ni (0), b) a compound which complexes as a ligand and comprises phosphites, phosphonites or mixtures thereof, c) a Lewis acid, and d) a compound of the formula  $MR_n$ , where c) and d) are different, and where M is selected from Al and Ti.

The claimed specific combination of a Lewis acid and a compound of the formula  $MR_n$ , where the Lewis acid and  $MR_n$  are different, and where M is selected from Al and Ti is only described by the present invention, not by Rosier et al.

Further, as shown by the description in the present specification, the catalyst system of the present invention leads to better results than the catalyst systems of Rosier et al. Therefore, the present claims are not obvious in view of Rosier et al.

#### **Double Patenting Rejection**

The rejections of claims 1-7 and 19-20 under the judicially created doctrine of obviousness type double patenting as being unpatentable over the claims of co-pending US Patent application nos. 10/576,679 and 10/577,681 have been overcome by the filing of the attached Terminal Disclaimer.

The filing of the Terminal Disclaimer is not to be construed as an admission, estoppel or acquiescence. See *Quad Environmental Technology v. Union Sanitary District*, 20 USPQ2d 1392 (Fed. Cir. 1991) and *Ortho Pharmaceuticals Corp. v. Smith*, 22 USPQ2d 1119 (Fed. Cir. 1992).

In view of the foregoing reasons, consideration and allowance are respectfully solicited.

In the event the Examiner believes an interview might serve in any way to advance the prosecution of this application, the undersigned is available at the telephone number noted below.

The Office is authorized to charge any necessary fees to Deposit Account No. 22-0185.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 03-2775, under Order No. 12810-00135-US1 from which the undersigned is authorized to draw.

Dated: December 24, 2008

Respectfully submitted,

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